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**RESPONSE OF THE TECHNOLOGY AND CONSTRUCTION BAR ASSOCIATION
TO THE BAR COUNCIL CONSULTATION ON BARMARK
and THE PROPOSED "BAR BUSINESS STANDARD"**

1. **The Consultation:** Technology and Construction Bar Association ("TECBAR") has only recently found out about this consultation. It has not been invited to participate in this consultation. It appears that none of the SBAs have been invited to provide comments on the proposed quality standard. TECBAR would very much wish to be consulted on behalf of its members in the future in relation to any consultations conducted by the Bar Council which affect its members which this consultation clearly does. Given the time constraints we limit our comments to two important matters.
2. **Corporate entity:** We are concerned that the new proposed standard focuses on chambers as a single corporate entity and requires chambers to perform as such. By way of example only, the document talks about the "*success of chambers*", "*business planning*" of chambers, and ensuring that "*chambers has a clear purpose, vision and values*", further that "*Barristers and staff are committed to and share chambers vision, values and goals*", "*chambers knows what clients want*", "*Client satisfaction with the services provided by chambers is tested*" and "*The business strategy for chambers*".

3. This emphasis on and indeed promotion of chambers as a single entity or a single “business”, as opposed to a number of self-employed practitioners, is likely in the long run to make it extremely difficult for the self-employed Bar to continue to function in the way that it has done historically. There is a clear shift between the new document and the previous BARMARK and QualityMark, whereas the latter were focused on good management within chambers the former clearly emphasizes a successful business unit. This is also apparent from the Counsel article promoting the new scheme “*The onus will be on chambers to demonstrate good business practice relevant to the market they are operating in and to show that this has had an impact on profitability.*”

4. Any client reading the new standard would, we suspect, have great difficulty in understanding how barristers from one chambers are able to appear against each other or indeed before arbitrators, mediators and adjudicators from the same chambers. The ability to so practise is important to the Bar as a whole, but it is of particular importance to the more specialist fields of practise where barristers from the same chambers still frequently appear against each other. In the international market, a growing market for the Bar and our membership, the Bar, and our members, are already finding it a challenge to explain the structure of chambers and the relationship of self-employed practitioners to each other and to their chambers to foreign clients, firms and legal bodies such as arbitral institutions. The text and approach encouraged in the proposed standard is only likely to make this more difficult.

5. The joint Chancery Bar Association and TECBAR response to the BSB consultation on the BSB Handbook and Entity Regulation concludes that the self-employed Bar, operating on the chambers model, is put at risk if sets of chambers are treated as indistinguishable from corporate entities providing legal services. We reiterate this here. Further, once lost it cannot be regained and the substantial public benefit provided by the self-employed Bar would then be lost.

6. **Regulation:** Historically the BARMARK accreditation has perhaps been of less direct relevance to our members in so far as it was voluntary, albeit barristers carrying out publicly funded work generally had to work from a chambers which satisfied BARMARK. Of the 7 largest sets in our membership 3 are BARMARK accredited and 4 are not.

7. The Counsel article about the new standard suggested that it was “*anticipated that BARMARK-accredited chambers will be subject to less frequent monitoring than non-accredited sets*”. We are concerned by the suggestion that sets who do not obtain the new accreditation will be treated as high risk by regulators. This changes the nature of and importance of accreditation in that it makes it very difficult for chambers not to seek the accreditation. It makes it all the more important that there is proper consultation about the standard and a clear recognition of the consequences of the standard being implemented. Most members we suspect would be most surprised to discover that it is relevant to the regulator whether the members of chambers are for example “*committed to and share chambers vision, values and goals*” and whether this translates into profitability.

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